

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 542

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO CHILDREN; AMENDING THE DEFINITION OF "CAREGIVER" IN
THE KINSHIP GUARDIANSHIP ACT; AMENDING SECTIONS OF THE KINSHIP
GUARDIANSHIP ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 40-10B-2 NMSA 1978 (being Laws 2001,
Chapter 167, Section 2) is amended to read:

"40-10B-2. POLICY--PURPOSE. --

A. It is the policy of the state that the interests
of children are best served when they are raised by their
parents. When neither parent is able or willing to provide
appropriate care, guidance and supervision to a child, it is
the policy of the state that, whenever possible, a child should
be raised by family members, or [kinship] caregivers.

B. The Kinship Guardianship Act is intended to

1 address those cases where a parent has left a child or children
2 in the care of another for ninety consecutive days and that
3 arrangement leaves the child or children without appropriate
4 care, guidance or supervision.

5 C. The purposes of the Kinship Guardianship Act are
6 to:

7 (1) establish procedures to effect a legal
8 relationship between a child and a kinship caregiver or other
9 caregiver when the child is not residing with either parent;
10 and

11 (2) provide a child or a sibling group with a
12 stable and consistent relationship with a kinship caregiver or
13 other caregiver that will enable the ~~[child]~~ children to
14 develop physically, mentally and emotionally to the maximum
15 extent possible when the ~~[child's]~~ children's parents are not
16 willing or able to do so."

17 Section 2. Section 40-10B-3 NMSA 1978 (being Laws 2001,
18 Chapter 167, Section 3) is amended to read:

19 "40-10B-3. DEFINITIONS.--As used in the Kinship
20 Guardianship Act:

21 A. "caregiver" means:

22 (1) an adult, who is not a parent of a child,
23 with whom a child resides and who provides that child with the
24 care, maintenance and supervision consistent with the duties
25 and responsibilities of a parent of the child; or

1 (2) a nonprofit organization that:

2 (a) receives no public funding;

3 (b) acts as a temporary or permanent
4 guardian of children voluntarily placed in its care pursuant to
5 a caregiver's power of attorney;

6 (c) is dedicated to maintaining sibling
7 groups intact in a residential setting; and

8 (d) provides the children placed with it
9 the care, maintenance and supervision consistent with the
10 duties and responsibilities of a parent of the children;

11 B. "child" means an individual who is a minor;

12 C. "kinship" means the relationship that exists
13 between a child and a relative of the child, a godparent, a
14 member of the child's tribe or clan or an adult with whom the
15 child has a significant bond;

16 D. "parent" means a biological or adoptive parent
17 of a child whose parental rights have not been terminated; and

18 E. "relative" means an individual related to a
19 child as a spouse, parent, stepparent, brother, sister,
20 stepbrother, stepsister, half-brother, half-sister, uncle,
21 aunt, niece, nephew, first cousin or any person denoted by the
22 prefix "grand" or "great", or the spouse or former spouse of
23 the persons specified. "

24 Section 3. Section 40-10B-9 NMSA 1978 (being Laws 2001,
25 Chapter 167, Section 9) is amended to read:

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underscored material = new
[bracketed material] = delete

1 "40-10B-9. GUARDIAN AD LITEM - APPOINTMENT. --

2 A. In a proceeding to appoint a guardian pursuant
3 to the Kinship Guardianship Act, the court may appoint a
4 guardian ad litem for the child upon the motion of a party or
5 solely in the court's discretion. The court shall appoint a
6 guardian ad litem if a parent of the child is participating in
7 the proceeding and objects to the appointment requested.

8 B. In a proceeding in which a parent of the child
9 has petitioned for the revocation of a guardianship established
10 pursuant to the Kinship Guardianship Act and the guardian
11 objects to the revocation, the court shall appoint a guardian
12 ad litem.

13 C. The court may order all or some of the parties
14 to a proceeding to pay a reasonable fee of a guardian ad litem.
15 If all of the parties are indigent, the court may award a
16 reasonable fee to the guardian ad litem to be paid out of funds
17 of the court.

18 D. The court shall appoint a guardian ad litem in
19 all cases involving a nonprofit organization caregiver."

20 Section 4. Section 40-10B-14 NMSA 1978 (being Laws 2001,
21 Chapter 167, Section 14) is amended to read:

22 "40-10B-14. CONTINUING JURISDICTION OF THE COURT. --

23 A. The court appointing a guardian pursuant to the
24 Kinship Guardianship Act retains continuing jurisdiction of the
25 matter.

1 B. In a case involving a child less than fourteen
2 years of age placed with a nonprofit caregiver, the court shall
3 review the placement of the child every six months. In a case
4 involving a child fourteen years of age or older placed with a
5 nonprofit caregiver, the court shall conduct an annual review
6 of the placement of the child. The review to assess a child's
7 placement and make a recommendation to the court based on the
8 review shall be conducted by the guardian ad litem appointed by
9 the court for the child placed with a nonprofit caregiver. "

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[bracketed material] = delete